STATE OF NEBRASKA
Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
(402) 471-2682
TDD (402) 471-2682
CAPITOL FAX (402) 471-3297
1235 K ST. FAX (402) 471-4725

DON STENBERG
ATTORNEY GENERAL

STEVE GRASZ
LAURIE SMITH CAMP
DEPUTY ATTORNEYS GENERAL

#96038

NEB. STATE OF NEBRASKA
OFFICIAL
APR 29 1996
DEPT. OF JUSTICE

DATE: April 24, 1996

SUBJECT: Authority of DPI to Assess Patients and Relatives for Their Ability to Pay

REQUESTED BY: Senator David I. Maurstad

WRITTEN BY: DON STENBERG, Attorney General
Martin W. Swanson, Assistant Attorney General

This office has received a request for a formal opinion from you regarding this specific question: Does Neb. Rev. Stat. § 83-363 through § 83-375 (1994) authorize the Executive Branch to assess patients or their relatives for the cost of care, support, maintenance, and treatment based upon their ability to pay if they have never been admitted to a state institution, or have never received treatment prescribed by an institution? The answer to this question is no. However, those statutes must be read in conjunction with Neb. Rev. Stat. § 83-1211 (1994) which specifically states:

> A person receiving specialized services from a local specialized program which receives financial assistance through the department shall be responsible for the cost of such services in the same manner as are persons receiving care at the Beatrice State Developmental Center. Provisions of law in effect on September 6, 1991, or enacted after such date relating to the responsibility of such persons and their relatives for the cost of and determination of ability to pay for services at the center shall also apply to persons receiving services from specialized programs.

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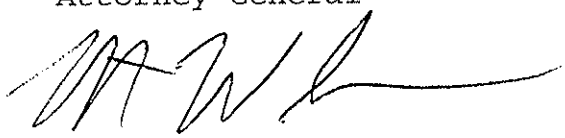
When Neb. Rev. Stat. § 83-1211 (1994) is read in conjunction with Neb. Rev. Stat. § 83-363 through § 83-375 it is clear that the Legislature has authorized the executive branch to assess patients or their relatives for their ability to pay even if they have not been admitted to or received treatment from a state run institution. Because of Neb. Rev. Stat. § 83-1211 (1994), persons receiving treatment at state operated facilities and those receiving treatment through community based programs paid for by the State are treated equally.

Additionally, it is important to note that when a potential patient applies for services that are funded by the Department of Public Institutions, he or she is first evaluated to determine if they are eligible for services. *See* 205 NAC 1, 001.15, 001.21, 007.02A. If determined eligible, and if such individual actually receives DPI funded services, the patient is then assessed for their ability to pay and billed for these services accordingly. *See* 202 NAC. If a patient or their family believes that this assessment of their ability to pay is incorrect, they may appeal that determination. *See* 202 NAC, 207 NAC.

Sincerely,

DON STENBERG
Attorney General



Martin W. Swanson
Assistant Attorney General

cc: Patrick J. O'Donnell
Clerk of the Legislature

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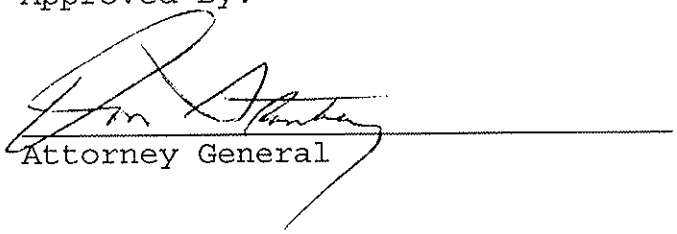

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